IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10304 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARIHAR P JANI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10304 of 2003

MR AJAY R MEHTA for Petitioner No. 1-5

Mr. KD Pandya, AGP for Respondent No. 1

MR PRASHANT G DESAI for Respondent No. 2

MS KJ BRAHMBHATT for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 02/08/2004

ORAL JUDGEMENT

Rule. Service of Rule is waived by Mr. KD Pandya, learned AGP on behalf of respondent No.1, learned advocate, Shri Prashant G. Desai on behalf of respondent No.2 and Ms. KJ Brahmbhatt, learned advocate on behalf of

respondent No.3. With the consent of the parties, the matter is taken up for final hearing today.

2. In this petition, the petitioners have prayed for an appropriate writ, direction or order quashing and setting aside the decision of the Surat Municipal Corporation, more particularly the Resolution No. 2 of 2001 by which the Municipal Corporation has proposed for variation of the Town Planning Scheme No. 5, (Umra North) with regard to the road admeasuring 7.5 mtrs. passing through Final Plot No. 118/124. It is the contention on behalf of the petitioners that under the finalised Town Planning Scheme Surat No. 5 (Umra North), there is a road admeasuring 7.5 meters passing from Final Plot No. 118/124 which leads to Final Plot No. 120 where the petitioners are residing. The petitioners have submitted that the office of respondent No.2 without even getting the Town Planning Scheme varied,closed the aforesaid 7.5 mtrs. road and constructed a wall which subsequently came to be demolished.

3. In response to the notice issued by this Court, Shri PG Desai appears on behalf of respondent No.2, Surat Municipal Corporation. He has tried to justify the proposal for variation. Shri KD Pandya, learned AGP appears on behalf of the State Government. Affidavits-in-reply are also filed on behalf of the Surat Municipal Corporation as well as on behalf of the State Government. In the affidavit-in-reply filed on behalf of the State Government, it is pointed out that the proposal of the Surat Municipal Corporation for variation of the scheme to the aforesaid extent is pending before the State Government and no decision has been taken yet. In that view of the matter, the petition is at this premature. The State Government is bound to consider the objections and follow the procedure as required under the provisions of the Gujarat Town Planning Act. However, it is directed that before taking a final decision, the State Government may consider the objections submitted by the petitioners and also on behalf of respondent No.3 and thereafter may take a final decision on the proposal of the Surat Municipal Corporation for variation. In view of the fact that the proposal is pending since 2000, the appropriate authority of the State Government is directed to consider the same and take a final decision within a period of 3 months from the date of receipt of this order.

3.1. In view of the fact that at present there is a 7.5 metres road passing from final plots No. 118/124 under the Final Town Planning Scheme Surat No.5 (Umra

North), the parties are directed to maintain status-quo with regard to the road in question, as as on today as per the Town Planning Scheme which has become final is not varied.

4. With these observations and direction, the present Special Civil Application is disposed of. Rule is made absolute to the aforesaid extent with no order as to costs.

rmr. [M.R. Shah, J.]